



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

mk

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,429	02/14/2000	Thomas Blaszczykiewicz	202.000080	6587
24041	7590	02/17/2004	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406				WACHTEL, ALEXIS A
ART UNIT		PAPER NUMBER		
				1764

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/503,429	BLASZCZYKIEWICZ, THOMAS	
	Examiner Alexis Wachtel	Art Unit 1764	
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
1) <input type="checkbox"/> Responsive to communication(s) filed on <u>10-10-2003</u> . 2a) <input type="checkbox"/> This action is FINAL . 2b) <input checked="" type="checkbox"/> This action is non-final. 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
Disposition of Claims			
4) <input checked="" type="checkbox"/> Claim(s) <u>1-12</u> is/are pending in the application. 4a) Of the above claim(s) _____ is/are withdrawn from consideration. 5) <input type="checkbox"/> Claim(s) _____ is/are allowed. 6) <input checked="" type="checkbox"/> Claim(s) <u>1-12</u> is/are rejected. 7) <input type="checkbox"/> Claim(s) _____ is/are objected to. 8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
Application Papers			
9) <input type="checkbox"/> The specification is objected to by the Examiner. 10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.			
Priority under 35 U.S.C. §§ 119 and 120			
12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.			
13) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78. a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.			
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.			
Attachment(s)			
1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.	

Detailed Action

1. The text of US code absent in this office action can be found in a previous office action.
2. Claims 1,4,6,8,9 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,139,476 to Peters as set forth in sections 7 and 8 of the first office action.
3. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters as set forth in section 10 of the first office action.
4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters in view of US 5,399,306 to Follows et al as set forth in section 10 of the first office action as set forth in the previous final rejection.
5. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters in view of US 5,900,087 to Chakrabarti as set forth in section 11 of the first office action.

Response to Arguments

6. Applicant argues that the outstanding rejections have been overcome by way of a 132 Affidavit comparing tests for peel strength, stretch and recovery and porosity of the materials disclosed by Peters and the material claimed in claim 1. The Applicant submits that the results of the test confirm that distinct differences exist between the material disclosed by Peters and the claimed materials. However, Applicant's 132 Affidavit is not commensurate in scope with the instant claims. In particular, claim 1 calls for *inter alia* "A breathable, stretchable, hydrophilic material comprising: a porous inner layer of stretchable fabric; a porous outer layer of stretchable fabric; and, a central layer

of open cell foam fixed between said inner and outer layers to stretch with said inner and outer layers, wherein said central layer is comprised of compressed foam."

The previously applied prior either anticipates or renders obvious the claimed material. While Applicant's 132 Affidavit may show that certain differences may exist between the material of the prior art and the instant invention, the Applicant must amend the claims so that they are commensurate in scope with the Affidavit.

The Examiner also notes that usage of the term "compressed foam" with a claiming properties has not been conclusively shown to differentiate the claimed article over the prior art.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Glenn Calderola can be reached at (703) 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Glenn Calderola
Supervisory Patent Examiner
Technology Center 1700